

WALLER LANSDEN DORTCH & DAVIS, PLLC

WALLER LANSDEN DORTCH & DAVIS, PLLC
THE CHESAPEAKE BUSINESS CENTRE
1616 WESTGATE CIRCLE SUITE 106
BRENTWOOD TENNESSEE 37027 8019
(615) 844 6212

WALLER LANSDEN DORTCH & DAVIS LLP
AFFILIATED WITH THE PROFESSIONAL LIMITED LIABILITY COMPANY
520 SOUTH GRAND AVENUE SUITE 800
LOS ANGELES CALIFORNIA 90071
(213) 362-3680

NASHVILLE CITY CENTER
511 UNION STREET, SUITE 2700
POST OFFICE BOX 198966
NASHVILLE, TENNESSEE 37219-8966

(615) 244-6380
FAX (615) 244-6804
www.wallerlaw.com

WALLER LANSDEN DORTCH & DAVIS PLLC
809 SOUTH MAIN STREET
POST OFFICE BOX 1035
COLUMBIA TENNESSEE 38402 1035
(931) 388 6031

D. Billye Sanders
(615) 850-8951
billye.sanders@wallerlaw.com

December 6, 2004

VIA HAND DELIVERY

Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37219

Re: Petition of Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks for Arbitration of a Collocation Agreement with Citizens Telecommunications Company of Tennessee L.L.C. or, in the alternative, for Resolution of Complaint against Citizens regarding Denial of Collocation Request

Dear Chairman Miller,

Enclosed you will find the original and 13 copies of the Brief of Petitioner, Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks in support of its Petition.

Sincerely,



D. Billye Sanders
Attorney for Iris Networks

cc: Richard Ebner
Guilford F. Thornton, Esq

RECEIVED
2004 DEC -6 PM 1:53
T.R.A. DOCKET ROOM

December 6, 2004

Page 2

bcc: Michelle Walker, Esq.

IN RE:)
)
)
PETITION OF TENNESSEE INDEPENDENT)
TELECOMMUNICATIONS GROUP, LLC) **DOCKET NO. 04-00310**
D/B/A IRIS NETWORKS FOR ARBITRATION)
OF A COLLOCATION AGREEMENT WITH)
CITIZENS TELECOMMUNICATIONS)
COMPANY OF TENNESSEE L.L.C. OR, IN)
THE ALTERNATIVE, FOR RESOLUTION)
OF COMPLAINT AGAINST CITIZENS)
REGARDING DENIAL OF COLLOCATION)

I. STATEMENT OF FACTS

Tennessee Independent Telecommunications Group, L.L.C. d/b/a Iris Networks (“Iris”) is a Tennessee limited liability company with its principal office located at 211 Commerce Street, Suite 610, Nashville, TN 37201. Iris is authorized in the State of Tennessee to provide competitive access services and transport telecommunications services.¹ Iris is not a competitive local exchange carrier (“CLEC”), nor is it an interexchange carrier (“IXC”). It is a carriers’ carrier that provides transport for CLECs and IXCs.²

Citizens Telecommunications of Tennessee, L.L.C. (“Citizens”) is an incumbent local exchange carrier (“ILEC”) that serves the Cookeville area in Putnam County, Tennessee. Citizens is subject to price regulation pursuant to order of the Tennessee Public Service

¹ Iris' authority was granted by the Tennessee Regulatory Authority in Docket No. 03-00581.

² In its response, Citizens claims “Iris has not and cannot show that it is acting as a CAP for local carriers and has prospective CLEC customers who wish to provide local exchange service in Citizens’ territory.” See Citizens Telecommunications Company of Tennessee L L C.’s Response to Petition and Motion to Dismiss at pg. 3, ¶ 7. Iris’ potential customers in the Cookeville area are both CLECs and IXCs. If the TRA would like Iris to provide affidavits with respect thereto, Iris would be willing to do so.

Commission (the predecessor agency to the Tennessee Regulatory Authority) in Docket No. 96-00010.

By letter dated April 15, 2004, Iris made a request to Citizens to collocate in the Cookeville Main Central Office of Citizens. By letter dated April 27, 2004, Citizens responded to Iris' letter indicating that Iris is not legally entitled to collocate in Citizens' Cookeville central office because Iris is not considered a CLEC.

On a conference call on May 25, 2004, legal counsel and business representatives from Citizens and Iris discussed Iris' request for collocation and Citizens again denied the request. By letter dated July 21, 2004, Iris set forth its legal position and facts which support its position that Citizens is required to allow Iris to collocate in the Cookeville central office pursuant to §251(c)(6) of the Telecommunications Act. In the letter, Iris requested Citizens to reconsider its position and allow Iris to collocate in the Citizens Cookeville central office.

By letter dated August 2, 2004, Citizens again denied Iris' request for collocation. The repeated denial of Iris' request prompted Iris to seek enforcement by the Tennessee Regulatory Authority ("TRA") of Citizens' duty to allow Iris to collocate pursuant to the Telecommunications Act (the "Act") through the filing of the Petition in this Docket ("the Petition").³ Citizens responded to Iris' Petition and filed a motion to dismiss the action. By Order, dated November 23, 2004, the TRA requested briefing and oral argument on the issue of Citizens' duty to allow collocation at its facilities.

³ See Petition of Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks for Arbitration of a Collocation Agreement with Citizens Telecommunications Company of Tennessee LLC or, in the Alternative, for the Resolution of Complain Against Citizens Regarding Denial of Collocation Request

II. ISSUE

Whether Citizens Telecommunications Company L.L.C. must provide physical collocation to Tennessee Independent Telecommunications Group L.L.C. d/b/a Iris Networks pursuant to 47 U.S.C. § 251(c)(6).

III. ARGUMENT

A. Iris is a Telecommunications Carrier in that it Offers Telecommunications Services by Providing Transport Service to both CLECs and IXCs.

While Iris is neither a CLEC or an IXC, it is a telecommunications carrier as defined in the Act. The Act stipulates the term telecommunications carrier means “any provider of telecommunications services, except as such term does not include aggregators of telecommunications services . . . [a] telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services . . .” 47 U.S.C. § 153(44). Telecommunication services are defined as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” 47 U.S.C. § 153(46) (emphasis added). Finally, telecommunications is defined by the Act as “the transmission, between or among points specified by the user, of information, of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. § 153(43).

Iris provides competitive access services and telecommunications transport services. Iris specifically transports the traffic of its CLEC and IXC customers. As such, it is a carriers’ carrier and limits its services to that particular class of customer. Iris’ customers, in turn, provide telecommunication services directly to the public. A telecommunications carrier is defined as any provider of telecommunication services. Telecommunications services is the offering of telecommunications either directly to the public or to a class of users as to be effectively

available directly to the public. Telecommunications is the transmission of information without changing the form or content of the information as sent and received. Iris provides a telecommunications service by providing telecommunications transport to CLEC and IXC customers, who then, in turn, provide the services to the public. Essentially, Iris is providing telecommunication services to “such classes of users as to be effectively available to the public.” Thus, Iris is a telecommunications carrier as such term is defined in the Act.

Citizens alleges that if Iris is neither an IXC or a CLEC, it cannot be providing a telecommunication service, thus it cannot be a telecommunications carrier.⁴ Citizens assumes that because Iris takes the position it is neither an IXC or a CLEC, it is automatically claiming that it is not a common carrier.⁵ Because § 153(44) provides that telecommunications carriers, under the chapter, will be treated as common carriers to the extent they are providing telecommunications services, Citizens claims that Iris must be a regulated common carrier to provide a telecommunications service as a telecommunications carrier.⁶

A common carrier is defined as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy . . .” 47 U.S.C. § 153(10). The definition is sufficiently broad to encompass many types of providers of telecommunication services, including Iris. As stipulated in its Petition and above, Iris received its certificate of authority from the TRA in Docket No. 03-00581. *See* Order in Docket No. 03-00581, attached hereto as Exhibit A. Generally, common carriers must provide the services they offer to anyone from the public who requests such services, without discriminating on rates and services. However, common carriers are permitted limit the class of

⁴ *See* Citizens Telecommunications Company of Tennessee L L C’s Response to Petition and Motion to Dismiss at p 5, ¶ 12-13.

⁵ *Id*

⁶ *Id*

customers they serve (i.e., to other carriers) and define the service they are willing and able to provide. This does not remove their status as common carriers, nor does it mean the services they provide are not telecommunications services.

Iris is authorized by the TRA to provide a telecommunication transport service to its customers, which include CLECs, IXCs, wireless carriers, Internet service providers and other carriers. Those customers then provide telecommunications services directly to the public. As such, Iris is providing a telecommunication service under the Act as a telecommunication carrier.

B. 47 U.S.C. § 251 and FCC Regulations Establish a Duty Requiring an ILEC to Allow Interconnection through Collocation when Requested by a Telecommunications Carrier.

The Act and its corresponding regulations plainly articulate that ILECs have a duty to provide for interconnection through collocation to a requesting telecommunications carrier. Section 251 and 252 of the Act are considered the “Development of Competitive Markets Provisions.”⁷ The provisions set up a de-regulatory framework in local telephone markets that have been typically dominated by a single regulated monopoly (i.e., an ILEC) that owns all of the equipment and lines needed in providing local telephone service.⁸ Section 251, establishes three mechanisms by which new entrants into the local market can achieve competitive ground by gaining access to an ILEC’s network through any one or all of the proscribed mechanisms. *See* 47 U.S.C. § 251(c)(2), (3), (4). Section 252 provides for the implementation of the requested access under the strategies in § 251 through voluntary negotiation or arbitration and establishes pricing standards for each strategy. *See* 47 U.S.C. § 252. Taken together, both of these provisions establish a duty for ILECs to allow for access to their networks through agreements between themselves and other telecommunication carriers.

⁷ *Bell Atlantic-Delaware, Inc v Robert J McMahon*, 80 F Supp 2d 218, 222 (D Del 2000)

⁸ *Id*

In order to establish “robust competition” in local markets where an ILEC holds a monopoly, the Act proscribes three mechanisms for entry into the market: (1) interconnection with an ILECs network (2) the use of “unbundled” elements of an incumbent’s network, and (3) resale of any ILEC’s retail telecommunications services purchased wholesale by the new entrant.⁹ Under the Act, it is the general duty of each telecommunications carrier to “interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . .” 47 U.S.C. § 251(a). Specifically, it is the duty of an ILEC to provide “for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier’s network . . .” 47 U.S.C. § 251(c)(2) (emphasis added). This interconnection can be efficiently achieved through an ILEC’s obligation to lease space on its premises so that a new entrant may collocate its equipment necessary for interconnection.¹⁰ Thus, § 251(c)(6) provides that each ILEC has:

The duty to provide, on rates, terms, conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State Commission that physical collocation is not practical for technical reasons or because of space limitations. (emphasis added)

47 U.S.C. § 251(c)(6). The plain language of § 251 stipulates that an ILEC must allow any requesting telecommunications carrier to interconnect with its network and that such interconnection can be achieved through collocation.

Additionally, the Federal Communications Commission (“FCC”) has established regulations implementing § 251 and § 252 that require ILECs to allow for interconnection with any requesting telecommunications carrier. 47 C.F.R. § 51.305(a).

⁹ *Bell Atlantic-Delaware, Inc* , 80 F Supp 2d. at 222, citing 47 U S C § 251(c)(2), (3), (4)

¹⁰ *Bell Atlantic-Delaware, Inc* , 80 F Supp 2d at 223, citing 47 U S C § 251(c)(6)

When establishing standards for physical collocation and virtual collocation under § 251, the FCC requires:

- (a) An incumbent LEC shall provide physical collocation and virtual collocation to requesting telecommunication carriers.
- (b) An incumbent LEC shall permit the collocation and use of any equipment necessary for interconnection or access to unbundled network elements.

47 C.F.R. § 51.323(a), (b). Throughout the rest of the regulation regarding collocation, the FCC repeatedly uses the phrase “requesting telecommunications carrier,” clearly articulating interconnection through collocation applies to any requesting telecommunications carrier. *See* 47 C.F.R. § 51.323.

C. Citizens, as an ILEC, has a Duty to Allow Interconnection through Collocation to Iris, a Requesting Telecommunications Carrier.

Iris has made clear that it is requesting interconnection to Citizens network through collocation. Specifically, Iris’s petition to the TRA articulated:

Iris seeks to collocate in Citizens’ Cookeville central office in order to interconnect with Citizens so that it can pick up traffic from Citizens and other carriers for transport out of Cookeville and to hand off traffic that it has transported to Cookeville to Citizens and other carriers.¹¹

This is precisely what was requested of BellSouth by Iris and, in that case, the parties reached an interconnection/collocation agreement that was approved by the TRA. *See* Order Approving Collocation in TRA Docket No. 03-00443, attached thereto as Exhibit B. As a telecommunications carrier, Iris has the right to request such interconnection through collocation, which Citizens, an ILEC, must provide under 47 U.S.C. § 251 and 252.

¹¹ The Petition at pg 5.

1. Iris, as a Telecommunications Carrier, is Authorized to Request Interconnection through Collocation Under § 251(c)(6) of the Act.

Citizens' response to Iris' Petition demonstrates it understood Iris' request to be one of interconnection through collocation under § 251(c)(6) of the Act.¹² However, Citizens insists the Act creates a dichotomy between interconnection as it applies to a CLEC and interconnection as it applies to a IXC.¹³ Citizens argues that because Iris transports traffic for IXCs, it falls under the provisions of § 251(g) of the Act. Citizens reading of the Act is illogical and impractical given the make-up of present-day telecommunications carriers and as applied to Iris.

As discussed in section B above, the plain language of both the Act and its corresponding regulations make clear that interconnection through collocation under § 251(c)(6) is applicable to any requesting telecommunications carrier. Regardless, Citizens insists that the Act creates two routes of interconnection depending on whether the carrier is a CLEC or an IXC. However, many CLECs are also IXCs, offering both local and long distance service. The Act does not prohibit a CLEC that is also an IXC from collocation in an ILEC's central office. A comparable logic applies to Iris. Iris carries traffic of both CLECs and IXCs. It is illogical to proffer that because some of the traffic is that of IXCs, Iris is only permitted to interconnect through a burdensome pre-Act scheme that would discriminate against its CLEC customers who simply may want to use Iris to transport their traffic prior to hand-off to another carrier for completion of the call.

Iris contends that neither Congress nor the FCC intended such a result given the broad purpose of the Act, thus it should not be read into the Act when the plain language clearly articulates otherwise. This argument is supported by not only the plain language of § 251, but also by the fact that the FCC specifically included IXCs in its definition of a telecommunications

¹² See Citizens Telecommunications Company of Tennessee L L C 's Response to Petition and Motion to Dismiss

¹³ *Id* at pg 1, 3 at ¶ 7, 4 at ¶ 8.

carrier. 47 C.F.R. § 51.5. It is much more logical to conclude that Congress, in § 251(g), only intended to allow local exchange carriers to continue to collect access charges from IXC's. As discussed below, Iris' collocation will not allow its IXC customers to avoid an access charge for the completion of a call.

2. Iris is not Helping its IXC Customers to Avoid Access Charges by Collocating

In order for its IXC customers to avoid access charges from other carriers, Iris would have to not only transport the call, but also complete the call once it reaches the Cookeville central office. Iris has repeatedly articulated to Citizens that it does not have the authority to, nor does it intend to complete calls. In its Petition to the TRA, Iris made clear that it is not seeking access to unbundled network elements.¹⁴ Iris simply wants to interconnect with Citizens by collocating in its facilities so that it may pick up its customers' traffic from Citizens and other carriers and hand-off its customers' traffic to Citizens and other carriers. At the point in which Iris hands off an IXC customer's traffic to Citizens or any other carrier to complete the call, Citizens or another carrier is not prohibited from charging any applicable access fee to the IXC customer. Accordingly, Iris customers would have an agreement or subscribe to a tariff to complete calls over Citizens' network or to Citizens' customers. This scenario comports with § 251(c)(2), (c)(6), and (g), and thus is the appropriate interpretation of the Act.

D. The Purpose and Spirit of the Act Require Citizens to Provide Access to Iris through Collocation.

Congress passed the Act in 1996, intending to "foster competition in 'all telecommunications market[s] in a procompetitive, deregulatory national policy framework . .

¹⁴ The Petition at p 5

..”¹⁵ “As part of that framework, the 1996 Act requires that incumbent local exchange carriers . . . provide new entrants to the local market with access to telephone networks and services on ‘rates, terms and conditions that are just, reasonable, and non-discriminatory.’”¹⁶ In fact, the Act preempts all state and local legal barriers to entry into local telephone markets and attempts to alleviate natural barriers to entry such as “ILEC monopoly control over ‘bottleneck’ or ‘essential’ facilities.”¹⁷

Iris is attempting provide telecommunications services in a local market in which Citizens has long enjoyed a monopoly. Iris seeks interconnection through collocation. Under the Act, Citizens has no right to deny such access and should be willing to negotiate interconnection through collocation as required under 47 U.S.C. § 251 and prescribed for under 47 U.S.C. § 252. To foreclose such negotiations before they have begun is counter to both the purpose and spirit of the Act and inherently denies Iris and its customers access to an essentially monopolized local market, the very kind of market the Act was designed to deregulate.¹⁸

IV. CONCLUSION

Iris is a competitive access service provider that transports the telecommunications traffic of other carriers, including CLECs and IXC. The draw to Iris’ service is that its customers can provide more efficient, less expensive service to their customers by transporting their traffic leased circuits from Iris instead of building their own facilities or paying two or more different carriers to carry the traffic for them. Such competition in the industry is precisely what the Act was designed to foster and support. In order to do so, the Act establishes three mechanisms for

¹⁵ *In re Petition of NextLink Tennessee, L L C for Arbitration of Interconnection with BellSouth Telecommunications, Inc* , No 98-00123, 1999 Tenn PUC LEXIS 280, at *3 (Tennessee Regulatory Commission, May 18, 1999), *quoting* S Rep No. 230, 104th Cong , 2d Sess 1 (1996)

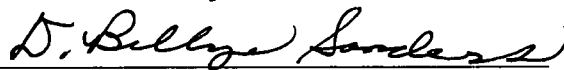
¹⁶ *Id* , *quoting* 47 U S C § 251(c).

¹⁷ Bell Atlantic-Delaware, Inc , 80 F. Supp 2d at 222

¹⁸ As stated in its petition, Iris believes Citizens refusal to negotiate a collocation agreement in contravention of § 251 of the Act is an anti-competitive practice in violation of T.C A § 65-5-209(c) and TRA Rule 1220-4-8 09(c)(3) 1068948 3

entry into a local, monopolized market. Interconnection through collocation under § 251(c)(6) is one of those mechanisms and the Act plainly articulates that it is available to any requesting telecommunications carrier. The Act does not stipulate that interconnection through collocation under § 251(c)(6) is only available to CLECs and such an interpretation of the Act directly conflicts with its purpose to create competitive local telecommunications markets. As such, Iris believes it is entitled to interconnect with Citizens network by collocating at its Cookeville central office under § 251(c)(6) of the Act.

Respectfully submitted,

A handwritten signature in cursive script, reading "D. Billye Sanders".

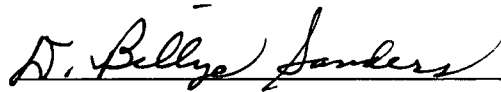
D. Billye Sanders (TN B.P.R.# 005631)
WALLER LANSDEN DORTCH & DAVIS, PLLC
511 Union Street, Suite 2700
Nashville, Tennessee 37219
Telephone: (615) 244-6380

Attorney for IRIS Networks

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent by first class U.S. mail, postage prepaid on this 6th day of December, 2004 to:

Guilford F. Thorton
Stokes Bartholomew Evans & Petree, P.A.
424 Church Street, Suite 2800
Nashville, Tennessee 37219

_____

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

May 18, 2004

IN RE:

APPLICATION OF TENNESSEE
INDEPENDENT TELECOMMUNICATIONS
GROUP, LLC D/B/A IRIS NETWORKS FOR
A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY TO
PROVIDE COMPETITIVE ACCESS
SERVICES AND TRANSPORT
TELECOMMUNICATIONS SERVICES
WITHIN THE STATE OF TENNESSEE AND
APPROVAL OF THE FRANCHISE
AGREEMENT WITH THE CITY OF
KNOXVILLE

DOCKET NO.
03-00581

INITIAL ORDER GRANTING CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a Hearing held on March 15, 2004, to consider the *Application for Certificate of Public Convenience and Necessity to Provide Certain Telecommunications Services within the State of Tennessee and Approval of Franchise Agreement* (the "Application") filed by Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks ("Iris") on November 3, 2003. The Application requests the Authority to grant Iris a certificate of public convenience and necessity to provide competing access services and transport telecommunications services in the State of Tennessee and to approve a franchise agreement between Iris and the City of Knoxville.

Legal Standard for Granting Certificate of Public Convenience and Necessity and Approving Franchise Agreement

Iris' *Application* was made pursuant to, and was considered in light of, the criteria for granting a Certificate of Public Convenience and Necessity ("CCN") as set forth in Tenn. Code Ann. § 65-4-201, which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide

telecommunications services in an area outside its service area existing on June 6, 1995.¹

Tenn. Code Ann. § 65-4-107 requires that any privilege or franchise granted to any public utility by the State of Tennessee or by any political subdivision thereof be approved by the Authority. Such approval is to be granted only after a hearing and upon a determination by the Authority that the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interest. The City of Knoxville has granted Iris a non-exclusive, revocable license to construct, install and maintain its facilities in city rights-of-way and in consideration for the grant of the license has required, among other things, payment of five percent (5%) of the gross revenues received by Iris from operation of Iris' network in the city.

The March 15, 2004 Hearing

Pursuant to Tenn. Code Ann. § 65-4-204, public notice of the Hearing in this matter was issued by the Hearing Officer on February 27, 2004. No persons sought intervention prior to or during the Hearing. At the Hearing held on March 15, 2004, Ellen Bryson, Chief Manager of Iris Networks, 211 Commerce Street, Suite 610, Nashville, TN 37201, participated in the Hearing, presented testimony, and was subject to examination by the Hearing Officer. D. Billye Sanders, Esq., Waller, Lansden, Dortch & Davis, Nashville City Center, 511 Union Street, Suite 2100, P.O. Box 198966, Nashville, Tennessee 37219-8966, appeared on behalf of Iris. Angela Bolton,

¹ Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *In the Matter of AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, (Memorandum Opinion and Order) 14 F.C.C.R. 11,064 (May 27, 1999), (Memorandum Opinion and Order) 16 F.C.C.R. 1247 (January 8, 2001). The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See In re Application of Level 3 Communications, LLC to Expand its CCN to Provide Facilities-Based Local Exchange and Interexchange Telecommunications Services in all Tennessee Service Areas*, Docket No. 02-00230, Order Approving Application of Level 3 Communications, L.L.C. to Amend Its Certificate of Public Convenience and Necessity (June 28, 2002).

Esq., Assistant City Attorney, 400 Main Street, P.O. Box 1631, Knoxville, Tennessee 37901-1631, appeared on behalf of the City of Knoxville, Tennessee. Upon Iris's conclusion of the presentation of its proof, the Hearing Officer granted Iris' *Application* based upon the following findings of fact and conclusions of law:

I. Iris' Qualifications

1. Iris is a corporation originally organized under the laws of the State of Tennessee on November 25, 1998.

2. The complete street address of Iris' registered agent is Mark Patterson, 950 Main Street, Suite D, Wartburg, Tennessee 37887. The complete street address of Iris' corporate office is 211 Commerce Street, Suite 610, Nashville, Tennessee 37201. The telephone number is (615) 425-2300 and the facsimile number is (615) 986-2092.

3. The *Application* and supporting documentary information existing in the record indicate that Iris has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the City of Knoxville and within the State of Tennessee. Specifically, Iris' senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Iris has the necessary capital and financial ability to provide the services it proposes to offer.

5. Iris has represented that it will adhere to all applicable policies, rules and orders of the Authority.

II. Proposed Services

Iris intends to provide competitive access services and transport telecommunications services within the City of Knoxville and within the State of Tennessee.

III. Permitting Competition to Serve the Public Convenience and Necessity

Upon a review of the *Application* and the record in this matter, the Hearing Officer finds that approval of Iris' *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient, technologically advanced statewide system of telecommunications services and thus meets the requirements set forth in Tenn. Code Ann. § 65-4-201. The Hearing Officer finds that the proposed franchise fee of five percent (5%) can and should be reviewed under the standards set forth in Tenn. Code Ann. § 65-4-107 as part of the Authority's determination of whether the franchise "properly conserves the public interest." The Hearing Officer finds that the proposed franchise fee of five percent (5%) is not so excessive as to render the franchise contrary to the public interest. Based upon a review of the entire record, the Hearing Officer finds that the franchise agreement between Iris and the City of Knoxville "is necessary and proper for the public convenience and properly conserves the public interest" and thus meets the requirements of Tenn. Code Ann. § 65-4-107.

IV. Small and Minority-Owned Telecommunications Business Participation Plan

1. Iris has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

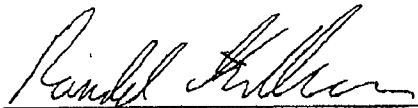
V. Compliance with Tennessee's County-Wide Calling Requirements

1. Iris has indicated its awareness of, and its obligation to comply with, the requirements of county-wide calling as set forth in Tenn. Code Ann. § 65-21-114.

IT IS THEREFORE ORDERED THAT:

1. The *Application for Certificate of Public Convenience and Necessity to Provide Certain Telecommunications Services within the State of Tennessee and Approval of Franchise Agreement* of Independent Telecommunications Group, LLC d/b/a Iris Networks is approved; and

2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from and after the date of this Order.


Randal Gilliam, Hearing Officer

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 31, 2004

IN RE:

**PETITION FOR APPROVAL OF A
COLLOCATION AGREEMENT BETWEEN
BELLSOUTH TELECOMMUNICATIONS, INC.
AND TENNESSEE INDEPENDENT
TELECOMMUNICATIONS GROUP, LLC**

**DOCKET NO.
03-00443**

ORDER APPROVING COLLOCATION AGREEMENT

This matter came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on March 22, 2004, to consider, pursuant to 47 U.S.C. § 252, the Petition for approval of the collocation agreement negotiated between BellSouth Telecommunications, Inc. and Tennessee Independent Telecommunications Group, LLC, filed on July 18, 2003. Collocation is one of the elements of interconnection included in 47 U.S.C. § 251, and as such collocation agreements require state approval pursuant to 47 U.S.C. § 252

Based upon a review of the agreement, the record in this matter, and the standards for review set forth in 47 U.S.C. § 252, the Directors unanimously granted the Petition and made the following findings and conclusions:

- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104.
- 2) The agreement is in the public interest as it assists in providing consumers with alternative sources of telecommunications services within the service area of BellSouth Telecommunications, Inc.

3) The agreement is not discriminatory to telecommunications service providers that are not parties thereto.

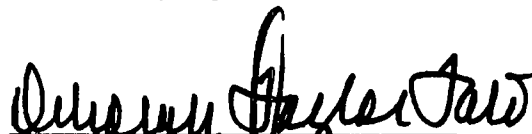
4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.” Unlike arbitrated agreements, a state commission may not reject a negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).¹ Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the agreement is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.

5) No person or entity has sought to intervene in this docket.

6) The agreement is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104.

IT IS THEREFORE ORDERED THAT:

The Petition is granted, and the collocation agreement negotiated between BellSouth Telecommunications, Inc. and Tennessee Independent Telecommunications Group, LLC d/b/a Iris Networks is approved and is subject to the review of the Authority as provided herein.


Deborah Taylor Tate, Chairman


Pat Miller, Director


Sara Kyle, Director

¹ See 47 U.S.C. § 252(e)(2)(B).